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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183352
Party	Defendant ROLA COLA INC.
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Submission	Answer
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Date	06/02/2008
Attachments	Rola Cola 10.2-001Answr & Defs to Opp 6-2-08.pdf (5 pages)(626423 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/657,209 & 76/657,207

Filed: March 24, 2006

Published in the Official Gazette: December 4, 2007

Marks: **ROLA COLA & ROLA COLA NATURAL...LY**- Class 032

THE COCA-COLA COMPANY, :

Opposer,

VIA ESTAA

v. :

Opposition No.: 91/183,352

ROLA COLA, INC. :

Applicant.

June 2, 2008

Trademark Trial and Appeal Board
U.S. Patent & Trademark Office
Hon. Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

**ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION &
AFFIRMATIVE DEFENSES**

Sir:

Applicant, Rola Cola, Inc., by and through its attorneys, answers the Consolidated Notice of Opposition, as follows:

1) Applicant hereby confirms that Opposer granted Applicant an Extension of Time to answer until June 2, 2008.

2) Applicant does not have sufficient information to admit or deny the allegations of paragraphs **3, 4, 5, 7, and 12** and therefore denies same and leaves Opposer to its proofs.

3) Applicant admits to the allegations in paragraphs **1, 5, 6, 10, 14, and 18** of the Consolidated Notice of Opposition.

4) Applicant denies the allegations contained in paragraphs **2, 8, 9, 11, 13, 15, 16, 17, 19, 20, 21, and 22**, of the Consolidated Notice of Opposition.

AFFIRMATIVE DEFENSES

5) Since 2005, Coca Cola has known of Applicant's marks and has not objected to Applicant's use of its marks for approximately three (3) years. Opposer's allegations are barred by laches, acquiescence, and estoppel, since Applicant, Rola Cola, Inc., and Opposer, Coca Cola, entered into an informal written distribution agreement in 2005 which permitted Rola Cola to use its marks that are now being opposed.

6) Opposer's allegations are barred by laches, acquiescence, and estoppel, since, among other acts and omissions, Opposer has failed to oppose numerous other marks using the term **COLA** in the beverage field (Classes 32, 33).

7) Opposer's trademark rights are limited to third parties using **COCA**, either alone or in combination with other wording or logos. Opposer's marks are distinguishable from Applicant's marks, **ROLA COLA & ROLA COLA NATURAL...LY**, which do not use **COCA**, and only use **COLA**, which is generic.

8) The **COCA COLA** marks owned by Opposer are dissimilar in sound, appearance, meaning and commercial impression from Applicant's marks, and are therefore not likely to lead to confusion, as defined by Section 2(d) of the Lanham Act, with Applicant's marks **ROLA COLA & ROLA COLA NATURAL...LY**.

9) Opposer cannot claim exclusive rights **to all variations of marks** in classes 032 and 033 (the beverage field) which include the generic root term **COLA***, in view of the indisputable fact that there are extensive and numerous third-party usages and federal trademark registrations that incorporate the generic root term **COLA*** in combination with other wording in Opposer's field of goods.

10) The third party usages and registrations with **COLA** are owned by various different companies, and the third party marks and registrations with **COLA** are valid, subsisting and co-exist on the Principal Trademark Register and in the marketplace.

11) Thus, Opposer does not have exclusive rights to all usages with the term **COLA**.

12) As a result of Opposer's three years of neglect in failing to object to use of Applicant's marks, despite having been made aware of same at least as early as 2005, Applicant has incurred expenses and legal fees which were unnecessary and have caused harm to Applicant.


Accordingly, in view of the foregoing defenses, Applicant requests that the Consolidated Notice of Opposition be dismissed with prejudice, and that the subject Applicant's marks be allowed to proceed to registration.

Respectfully submitted,
EZRA SUTTON, P.A.

Attorneys for Applicant,
Rola Cola, Inc.

Dated: June 2, 2008

By:



JOSEPH E. SUTTON, Esq.
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CERTIFICATE OF SERVICE

I, JENNIFER L. FRIEDMAN, being over the age of 18 and not a party to this action, do hereby certify that the foregoing Applicant's **ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**, was served by electronic mail and first-class, postage prepaid mail on this 2nd day of June, 2008 upon the attorneys for the Opposer, namely, James H. Johnson, Esquire, of Sutherland, Asbill, and Brennan, LLP, 999 Peachtree Street, N.E., Atlanta, Georgia 30309.


JENNIFER L. FRIEDMAN